

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 28, 2004

Agenda ID #4190
Quasi-Legislative

TO: PARTIES OF RECORD IN RULEMAKING 03-08-019

This is the draft decision of Administrative Law Judge (ALJ) Koss. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN by PSW
Angela K. Minkin, Chief
Administrative Law Judge

ANG:avs

Attachment

Decision **DRAFT DECISION OF ALJ KOSS** (Mailed 12/28/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion to Amend General
Order 77-K.

Rulemaking 03-08-019
(Filed August 21, 2003)

OPINION NOT TO AMEND GENERAL ORDER 77-L**Summary**

General Order (GO) 77-L will not be amended and remains in effect as originally adopted in August 2004. To improve public access to the annual executive compensation reports required by GO 77, Tier I Utilities (those with over \$1 billion annual operating revenue) are directed to provide the Commission an electronic copy of all future reports and an internet link reference to their Securities and Exchange Commission (SEC) 10-K reports (Proxy Statements) for publication on the Commission's web-site (www.cpuc.ca.gov).

Background

In December 2002, the Greenlining Institute/Latino Issues Forum (G/LIF) filed Petition for Rulemaking (P.) 02-12-039 requesting modifications to GO 77-K regarding the reporting of executive compensation data by utilities. The petition sought to increase the compensation levels that trigger reporting under the general order and to require regulated utilities and their holding companies to disclose executive diversity/ethnicity, compensation and philanthropic contributions in the GO 77 reports. The subject rulemaking closed P.02-12-039 by granting that portion regarding compensation levels that trigger reporting and denying the other portions. The rulemaking scope was limited to three specific

issues: (1) should the compensation levels that trigger reporting be increased; (2) should Competitive Local Exchange Carriers (CLECs) and Nondominant Interexchange Carriers (NDIECs) be exempt from the general order; and (3) should utilities be allowed to file information on employee names as confidential under Pub. Util. Code § 583.

As directed in the rulemaking, interested parties filed opening and reply comments in October 2003. On January 30, 2004, Pacific Gas and Electric Company (PG&E) and the Greenlining Institute (Greenlining) filed a joint petition to modify the rulemaking by expanding its scope to additionally require the six Tier 1 utilities operating in California to report holding company executive compensation and to report executive compensation and bonuses awarded but not paid in the reporting year. The petition also requested that these utilities be required to file written verification by an independent auditor on disclosure of these elements and provide an internet site link to all related documents filed with the SEC.

On March 1, 2004, the five other Tier 1 utilities filed responses opposing the PG&E/Greenlining petition. Generally, the other utilities stated this information is unneeded for the purposes of ratemaking, that holding company executive compensation was addressed and denied in the rulemaking, that executive compensation awarded in the prior year but not yet received was not within the scope of the rulemaking and that most of the requested additional information can be easily obtained from other sources.

Decision (D.) 04-08-055 adopted GO 77-L, superseding GO 77-K with revised rules in the three scoped areas. This decision also granted, in part, the PG&E/Greenlining Petition to modify the rulemaking by expanding its scope and soliciting further comments on the issues of Tier 1 utilities reporting holding

company executive compensation and of reporting bonuses awarded but not paid in the reporting year. The rulemaking remained open for this purpose.

Comments

As directed by an Administrative Law Judge (ALJ) ruling, comments relative to the expanded scope were due September 20, 2004 and replies September 30, 2004. All six Tier 1 utilities and Greenlining filed comments. The same parties, except PG&E, filed replies. Greenlining and PG&E support the proposed amendments to GO 77-L. The other five Tier 1 utilities are opposed.

Greenlining/PG&E

The Greenlining/PG&E position in this proceeding is based on concerns related to other recent Commission proceedings involving PG&E. In January 2004, PG&E awarded \$84 million in retention bonuses to its senior executives (including those of its holding company). PG&E awarded these bonuses shortly after a formal settlement was announced in its emergence from bankruptcy (D.03-12-035) and within the same time frame of its 2003 general rate case. In light of the bankruptcy, the retention bonuses seemed excessive. In light of the rate case, it was not clear if the retention bonuses were paid by ratepayers or shareholders.

D.04-05-055 addressed these issues. It found that the retention bonuses were the sole responsibility of the shareholders and directed that additional accounting and reporting measures be put in place to ensure these bonuses will not be charged to ratepayers in the future. Ordering Paragraph 12 of D.04-05-055 adopts the same four elements outlined by Greenlining/PG&E in this proceeding by ordering PG&E to file a separate tab in its GO 77-K reports with the following additional information:

- compensation of holding company executives listed its proxy statement.

- executive compensation awarded in the past year, but not yet received.
- written verification by an independent auditor that these items are fully disclosed.
- an internet site link to all documents filed with the SEC relating to executive compensation.

The decision also encouraged PG&E executives to return any excess bonus payments. Considering the concerns raised in the PG&E cases, Greenlining/PG&E support making these same directives permanent requirements of GO 77 and applicable to all Tier 1 utilities.

Other Tier 1 Utilities

Southern California Edison Company (Edison), San Diego Gas and Electric Company (SDG&E), Southern California Gas Company (SoCalGas), Pacific Bell Telephone Company dba SBC California (SBC) and Verizon California, Inc. (Verizon) all oppose adding additional filing requirements to GO 77-L. These utilities state that:

- holding company compensation data is not relevant to ratemaking and frequently involves information applicable to other states.
- information from the SEC proxy statements includes data on holding company executives and is easily available from other sources.
- information on bonuses awarded, but not paid can be unreliable and based on estimates compared to data on actual bonuses that can be accurately reported when paid.
- if needed, the Commission can obtain case-specific information, in special cases similar to PG&E, without making additional burdensome requirements for all utilities.

Edison makes its SEC proxy statements available on its website and cites the subject rulemaking stating that since SEC proxy statements are available from other sources, “it does not make sense” (R.03-08-019, p.11) to require it in GO 77 reports.

SDG&E and SoCalGas also make SEC proxy statements available on their websites and further state (filing jointly) that no legal or factual basis is shown and no rate-setting nexus exists to support including holding company data or information on bonuses awarded but not yet paid, in GO 77 reports.

Verizon and SBC both state that telecommunication utilities like themselves, operating under the New Regulatory Framework (NRF), have a further separation between executive compensation rate-setting data in that price-cap information is used to set rates, not current levels of executive compensation.

Discussion

The purpose of GO 77 is to provide the Commission with data to be used in the rate-setting process to determine if salaries and other compensation received by utility officers and employees are excessive or out of line with prevailing standards. The data contained in the current GO 77-L and in the SEC Proxy statements filed by all Tier 1 utilities is sufficient for the purposes of ratemaking. GO 77-L requires all Tier 1 utilities to file annual compensation data on all executives and employees with an annual income of at least \$125,000. The SEC Proxy Statements includes complete annual compensation data of the five highest paid officers of the utility and the five highest paid of the holding company, including salary, bonuses, stock options, pension plans and severance packages.

Both Tier 1 telecommunication utilities operating in the state, Verizon and SBC, operate under the NRF for setting their rates. NRF utilities primarily use price-cap data to set rates and not executive compensation.

Commission general orders establish general requirements that apply to all utilities defined in the order. The issues of concern in the recent PG&E cases are specific to PG&E's emergence from bankruptcy and executive retention bonuses it paid in 2003-2004. Though we do not anticipate a similar set of circumstances to occur, these types of issues can be better and more fully addressed in case-specific directives similar to those in D.04-05-055, and not made as an overly burdensome requirement for all Tier 1 utilities.

To ensure access to executive and employee compensation data, we will require Tier 1 utilities to provide an additional copy of all future GO 77 reports along with an internet link to their SEC Proxy statements. Both reports will be made available in a conspicuous place on the Commission's website beginning with reports due in 2005.

Conclusion

GO 77-L should not be amended. For Tier 1 utilities, the compensation data contained in the GO 77-L reports and SEC Proxy Statements is sufficient for the Commission's rate-making purposes. To improve access to these reports, both will be made available on the Commission's website, beginning with reports due in 2005.

Categorization Proceeding and Need for Hearing

In the rulemaking, this proceeding was preliminarily categorized as quasi-legislative and we preliminarily determined that hearings were unnecessary. Based on the record, we conclude that the proceeding is properly categorized and that a public hearing is unnecessary.

Comments on Draft Decision

The draft decision of the administrative law judge (ALJ) in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Kenneth L. Koss is the assigned ALJ in this proceeding.

Findings of Fact

1. GO 77 requires most utilities operating in California, including all Tier 1 utilities, to annually report the compensation data for its executives and certain employees.
2. The Commission uses GO 77 data for the purpose of setting the rates of most utilities.
3. The data filed in the GO 77 reports are open to the public and include employee names, salaries, expense accounts, contingent fees and reimbursed dues and donations.
4. The scope of the subject rulemaking was limited to three areas for possible revision to GO 77-K: annual compensation levels that trigger reporting to the Commission and establishing an automatic annual change to these levels; exempting certificated CLECs and NDIECs from the GO; and reporting information on employee names as confidential material, subject to Pub. Util. Code § 583.
5. In January 2004, Greenlining and PG&E filed a joint petition to modify the rulemaking to expand its scope to include, for Tier 1 utilities, the requirements of reporting the compensation of utility holding company executives, reporting

bonuses awarded but not yet paid in the reporting year, providing written verification from an independent auditor on these report elements and providing an internet link to all related SEC documents.

6. The Greenlining/PG&E petition to modify was filed relative to concerns in other Commission proceedings involving PG&E in 2003-2004 regarding its emergence from bankruptcy, general rate case and concurrent awarding of \$84 million in executive retention bonuses.

7. D.04-08-055 adopted GO 77-L with revised rules for filing executive and employee compensation data within the three areas of the initial scope of the rulemaking.

8. D.04-08-055 also granted the Greenlining/PG&E petition, in part, to expand the scope of the rulemaking to include and solicit further comment on Tier 1 utilities reporting holding company executive compensation and reporting bonuses awarded, but not paid in the reporting year.

9. Tier 1 utilities annually report compensation data on its executives and of its holding company executives in the SEC Proxy Statements.

10. SEC Proxy Statements are open to the public and include data on salary, stock options, pension plans, bonuses and severance packages.

11. The issues and circumstances surrounding the PG&E bankruptcy, general rate case and retention bonuses are specific to PG&E, were appropriately addressed on a case-specific basis and do not apply to other Tier 1 utilities.

12. Both Tier 1 telecommunication utilities in the state (Verizon and SBC) operate under the NRF and do not use executive compensation data to set rates.

13. Requiring data on Tier 1 utility holding company executive compensation and on bonuses awarded but not paid in GO 77 reports is burdensome and unnecessary for the needs of the Commission.

14. For Tier 1 utilities generally, the data included in the GO 77-L reports and the SEC Proxy Statements is sufficient for the Commission's ratemaking purposes.

15. Access to GO 77 reports and SEC Proxy Statements of Tier 1 utilities is necessary for interested parties to review ratemaking data.

16. Making these reports available on the Commission's website provides such access.

Conclusions of Law

1. GO 77-L should not be amended.

2. Tier 1 utilities (those with over \$1 billion annual operating revenue) should be required to provide the Commission an electronic copy of their future GO 77 reports and an internet link to their SEC proxy statement reports for inclusion on the Commission's web site (www.cpuc.ca.gov), beginning with reports due in 2005.

3. Today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. General Order (GO) 77-L shall not be amended.
2. Tier 1 utilities (those with over \$1 billion annual operating revenue) shall provide an additional electronic copy of future reports required by GO 77 and an internet link to their Securities and Exchange Commission 10-K reports (Proxy Statements) for publication on the Commission's web-site (www.cpuc.ca.gov), beginning with reports due in 2005.

This order is effective today.

Dated _____, at San Francisco, California.